

**Introduced by Senator Dunn**

February 22, 2005

---

An act to add Chapter 7.8 (commencing with Section 1129) to Part 3 of Division 2 of the Labor Code, relating to employment.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 848, as introduced, Dunn. Employment: port owner-operator drivers.

Existing law grants employees the right to have full freedom of association, self-organization, and designation of representatives of the employee's own choosing, to negotiate the terms and conditions of the employee's own employment, and to be free from interference, restraint, or coercion of employers in the designation of representatives or other activities for the purposes of collective bargaining. Existing law also specifically grants certain employees, such as agricultural employees, the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining.

This bill would state findings and declarations of the Legislature and would extend to port owner-operator drivers, as defined, the right to organize collectively to negotiate with port motor carriers, as defined, concerning their compensation, benefits, and terms and conditions of engagement, and would guarantee to port owner-operator drivers the right to full freedom of association, including the right to form, join, and participate in organizations of their own choosing, to withhold their services on a collective basis, and to be free from interference, restraint, or coercion by port motor carriers or their agents.

This bill would also provide that its provisions are severable.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. The Legislature hereby finds and declares all of  
2     the following:
- 3     (a) The flow of commerce to and from the intermodal  
4     terminals of this state is a matter of vital economic interest.
- 5     (b) There has developed over the last 30 years a system of  
6     trucking to and from intermodal terminals in which  
7     employee-drivers have been replaced almost entirely by single  
8     truck port owner-operator drivers who are largely new  
9     immigrants with little or no access to capital or the ability to  
10    bargain individually with trucking companies under whose legal  
11    authority they operate.
- 12    (c) These port owner-operator drivers operate the oldest and  
13    most polluting commercial vehicles in the California truck fleet  
14    because they lack the capital to purchase newer, cleaner-burning  
15    vehicles. These vehicles cause excessive diesel pollution, which  
16    has created an increased health risk for the surrounding  
17    communities.
- 18    (d) The conditions under which port owner-operator drivers  
19    operate have led to long lines of drivers waiting to pick up  
20    intermodal containers, causing unnecessary use of diesel fuel,  
21    increased pollution, and health risks to the surrounding  
22    communities.
- 23    (e) Intermodal terminal operators and shipping lines encourage  
24    an oversupply of port owner-operator drivers, further weakening  
25    the economic clout of the port owner-operator drivers and  
26    increasing economic inefficiency.
- 27    (f) Intermodal terminal operators and shipping lines, which are  
28    large multinational corporations, enjoy certain antitrust  
29    exemptions allowing them to engage in collective activities to  
30    increase their market clout, and these activities decrease the  
31    ability of port owner-operator drivers to negotiate for higher  
32    rates.
- 33    (g) The economic frustration of port owner-operator drivers  
34    has frequently resulted in wildcat strikes, boycotts, and other  
35    economically costly concerted activities outside of any organized

1 legal framework for the peaceful resolution of differences  
2 between the drivers and the port motor carriers.

3 (h) The port owner-operator drivers, when they are classified  
4 as independent contractors, are excluded from coverage by the  
5 National Labor Relations Act (29 U.S.C. Sec. 141 et seq.) and,  
6 therefore, may be granted rights by the states to engage in  
7 self-organization and collective economic action.

8 (i) As a result of the conditions under which they operate, port  
9 owner-operator drivers have virtually no ability to enter into fair  
10 and equitable negotiations with port motor carriers who virtually  
11 dictate the terms of contracts they offer drivers.

12 (j) Under these conditions, authorizing collective organization,  
13 joint negotiations, and a system for resolving economic disputes  
14 that arise between port owner-operator drivers and port motor  
15 carriers will increase economic efficiency, promote healthy  
16 economic competition, and create a legal framework for the  
17 peaceful resolution of economic conflict.

18 SEC. 2. Chapter 7.8 (commencing with Section 1129) is  
19 added to Part 3 of Division 2 of the Labor Code, to read:

20  
21 CHAPTER 7.8. PORT OWNER-OPERATOR DRIVERS  
22

23 1129. Notwithstanding any other provision of law, port  
24 owner-operator drivers shall have the right to organize  
25 collectively to better their economic conditions through joint  
26 negotiations with port motor carriers concerning their  
27 compensation, benefits, and terms and conditions of engagement.  
28 The port owner-operator drivers shall have full freedom of  
29 association, including the right to form, join, and participate in  
30 organizations of their own choosing, to withhold their services on  
31 a collective basis, and to be free from interference, restraint, or  
32 coercion by port motor carriers or their agents. Organizations  
33 representing port owner-operator drivers may execute  
34 agreements with a single port motor carrier or with multiple port  
35 motor carriers.

36 1129.1. (a) The provisions of Chapter 10 (commencing with  
37 Section 1138), regarding the issuance of injunctions, are  
38 applicable to disputes between port owner-operator drivers and  
39 port motor carriers.

(b) An organization representing port owner-operator drivers and a port motor carrier may, upon mutual agreement, submit any dispute to final and binding arbitration, including, but not limited to, the settlement of any outstanding economic issues.

1129.2. (a) “Port owner-operator driver” means a commercial driver who meets all of the following requirements:

(1) Owns or leases no more than one power unit and operates that unit under a contract with a port motor carrier to do any of the following tasks:

(A) Perform drayage of intermodal cargo containers from a marine terminal to a point of first unloading, warehousing, or interchange.

(B) Return empty containers or intermodal chassis to a marine terminal.

(C) Deliver loaded cargo containers to a marine terminal for export.

(2) Is classified as an independent contractor as defined by the National Labor Relations Board, under the National Labor Relations Act (29 U.S.C. Sec. 152(3)), and is not an employee of a port motor carrier.

(3) Employs no commercial drivers.

(b) “Port motor carrier” is a commercial motor carrier that engages in transportation of freight as described in paragraph (1) of subdivision (a) to and from a marine terminal and that contracts with port owner-operator drivers to provide that transportation. A port motor carrier includes a marine terminal operator, shipping line, or shipper that transports cargo containers directly or through a subsidiary to and from a marine terminal and employs port owner-operator drivers.

SEC. 3. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.